

405 KAR 12:030. Public participation in inspection and enforcement.

RELATES TO: KRS 350.020, 350.028, 350.050, 350.465

STATUTORY AUTHORITY: KRS 350.020, 350.028, 350.050, 350.465

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 in pertinent part directs the cabinet to rigidly enforce the law and administrative regulations promulgated to control the injurious effects of surface coal mining and reclamation operations. KRS Chapter 350 in pertinent part directs the cabinet to develop administrative regulations to allow persons who have an interest which is or may be adversely affected to participate at every significant part of the administrative process. This administrative regulation sets forth the requirements for public participation in the inspection process. This administrative regulation sets forth procedures for citizen requests for inspection and review by the cabinet of inspection and enforcement decisions.

Section 1. Citizen Requests for Inspection. (1) Any citizen may request that the cabinet conduct an inspection by furnishing to an authorized representative of the secretary, a signed, written statement, or an oral report followed by a signed written statement, giving the authorized representative reason to believe that a violation, condition, or practice in violation of KRS Chapter 350, administrative regulations promulgated pursuant thereto, or permit conditions exists, and setting forth a telephone number and address at which the person can be contacted.

(2) The identity of any person supplying information to the cabinet relating to a possible violation or imminent danger or harm shall remain confidential with the cabinet if requested by that person, unless disclosure is required by law.

(3) Within ten (10) days of the inspection, or if there is no inspection, within fifteen (15) days of receipt of the person's written statement, the cabinet shall send to the person the following:

(a) If no inspection was conducted, an explanation of the reasons why no inspection was conducted;

(b) If an inspection was conducted, a description of the enforcement action taken, if any, which may consist of copies of the inspection report and all notices and orders issued as a result of the inspection or an explanation of why no enforcement action was taken; and

(c) An explanation of the person's right, if any, to administrative review by an authorized representative of the cabinet, of the cabinet's determinations and actions pursuant to inspection and enforcement.

(4) The cabinet shall give copies of all materials in subsection (3) of this section within the time limits specified in that subsection to the person alleged to be in violation. The name of the person requesting the inspection shall be removed unless disclosure of that person's identity is permitted under subsection (2) of this section.

Section 2. Review of Decision Not to Inspect or Enforce. (1) Any person having an interest which is or may be adversely affected by a surface coal mining and reclamation operation or coal exploration operation may request the cabinet to review an authorized representative's decision not to inspect or not to take enforcement action with respect to any violation alleged by that person in a request for inspection pursuant to this administrative regulation. The request for a review shall be in writing and shall include a statement of how the person is or may be adversely affected and why the decision should be reviewed.

(2) An authorized representative of the cabinet shall conduct the review and inform the person and the permittee alleged to be in violation, in writing, of the results of the review within thirty (30) days of his receipt of the request.

(3) Administrative review under this section shall not affect any right to formal review pursuant to 400 KAR 1:110, Section 9 or other relief authorized by law.

Section 3. Citizen Requests for Review of Adequacy and Completeness of Inspections. (1) Any person having an interest which is or may be adversely affected by a surface coal mining and reclamation operation or coal exploration operation may notify the Commissioner of the Department for Natural Resources in writing of any alleged failure on the part of the cabinet to make adequate and complete or periodic inspections. The notification shall include sufficient information to create a reasonable belief that such failure exists and to demonstrate that the person has an interest which is or may be adversely affected.

(2) The commissioner shall, within fifteen (15) days of receipt of the notification, determine whether the cabinet's inspections have been adequate, complete and periodic, as provided in this chapter, and if not, shall immediately order an inspection. The commissioner shall also furnish the complainant with a written statement of the reasons for such determination and the actions, if any, taken to remedy the failure.

Section 4. Citizens Requests to Accompany Inspector. (1) Any person requesting an inspection under Section 1 may request to accompany the authorized representative of the cabinet during an inspection relative to the violation, condition, or practice with which the request was concerned.

(2) Such person shall have a right of entry to, upon and through the coal exploration or surface coal mining and reclamation operation about which the person supplied information, provided that the person is in the presence of and is under the control, direction, and supervision of the authorized representative of the cabinet while on the property. Such right of entry does not include a right to enter buildings without consent of the person in control of the building or without a search warrant.

(3) The authorized representatives of the cabinet shall exercise reasonable discretion in establishing the time and manner for inspections under this section. Nothing in this section shall be construed to place a duty of care upon the cabinet for persons accompanying authorized representatives of the cabinet.

(4) Any person desiring to participate in an inspection as provided in this section shall provide his or her own transportation to the site, and shall wear a hard hat and toe caps, to be supplied by the cabinet. (8 Ky.R. 1526; eff. 1-6-1983; TAm eff. 8-9-2007; TAm eff. 5-4-2018; Crt eff. 7-3-2018.)